

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CV-13516-DT  
Crim. No. 04-CR-80391-DT

DEWAYNE BOYD,

Defendant.

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**ORDER DISMISSING WITHOUT PREJUDICE DEFENDANT'S "MOTION UNDER  
28 U.S.C. § 2255 TO VACATE, SET ASIDE OR CORRECT SENTENCE"**

Pending before the court is Defendant DeWayne Boyd's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence." Defendant is a federal detainee. Sentencing is presently scheduled for September 26, 2006. Having reviewed the motion, the court determines that a hearing is unnecessary. See E.D. Mich. LR 7.1(e)(2). For the reasons stated below, the court will dismiss the motion without prejudice.

In his motion, Defendant asks the court to vacate or set aside his sentence, despite the fact that sentencing has not yet occurred. In its August 11, 2006 "Order to Show Cause Why Motion Should Not Be Dismissed," the court allowed Defendant until August 25, 2006 to show why his § 2255 motion should not be dismissed without prejudice as premature. Defendant has failed to respond to this Order. Accordingly,

IT IS ORDERED that Defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence" [Dkt. # 44] is DISMISSED WITHOUT PREJUDICE.

s/Robert H. Cleland

ROBERT H. CLELAND

UNITED STATES DISTRICT JUDGE

Dated: August 31, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 31, 2006, by electronic and/or ordinary mail.

s/Lisa G. Wagner

Case Manager and Deputy Clerk

(313) 234-5522